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11 Attorneys for Defendants
12 *The Vanguard Group, Inc. and Vanguard*
13 *Marketing Corporation*

14 UNITED STATES DISTRICT COURT
15 DISTRICT OF ARIZONA

16 Barbara Borchers, as Trustee and as attorney in
17 fact and, and Betty D. Olson, as a Trustee of
18 the Olson Living Trust,

19 No. 08-02138-PHX-ROS

Plaintiffs,

**ANSWER OF THE VANGUARD
GROUP, INC.**

20 v.

21 The Vanguard Group, Inc. and Vanguard
22 Marketing Corporation,

23 Defendants.

24 Defendant The Vanguard Group, Inc. responds to the allegations in Plaintiffs
25 Barbara Borchers and Betty D. Olson's Complaint as follows:

26 1. The Vanguard Group states that it lacks knowledge sufficient to form a
belief as to the truth of the allegations of Paragraph 1, and on that basis denies those
allegations.

27 2. The Vanguard Group admits that it is incorporated in Pennsylvania, that it

1 is authorized to conduct business in Arizona, and that it conducts business in Arizona.
2 The Vanguard Group states that the remaining allegations of Paragraph 2 are vague, and
3 on that basis denies the remaining allegations of Paragraph 2.

4 3. The Vanguard Group admits that one or more Plaintiffs opened and
5 maintained certain accounts. The Vanguard Group denies the remaining allegations of
6 Paragraph 3.

7 4. The Vanguard Group states that it lacks knowledge sufficient to form a
8 belief as to the truth of the allegations of Paragraph 4, and on that basis denies those
9 allegations. To the extent that the allegations of Paragraph 4 are intended or have the
10 effect of alleging any wrongful conduct on the part of The Vanguard Group, any such
11 allegations are expressly denied.

12 5. The Vanguard Group denies the allegations of Paragraph 5.

13 6. The Vanguard Group denies the allegations of paragraph 6.

14 7. The Vanguard Group denies each and every allegation that is not
15 specifically admitted in paragraphs 1-6 above.

Affirmative Defenses

17 The Vanguard Group states the following defenses to the causes of action asserted
18 in the Complaint without assuming the burden of proof where such a burden is otherwise
19 on Plaintiffs pursuant to applicable substantive procedural law. In addition, The
20 Vanguard Group notes that Plaintiffs fail to identify any cognizable cause(s) of action in
21 the Complaint, and The Vanguard Group is therefore not on notice of any causes of
22 action that Plaintiffs may intend to have alleged against The Vanguard Group. As a
23 result, The Vanguard Group reserves the right to assert additional affirmative defenses as
24 discovery proceeds in this matter.

25 A. Plaintiffs' Complaint fails to state a claim upon which relief may be
26 granted.

1 B. Plaintiffs lack standing to assert claims against The Vanguard Group.

2 C. Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s)
3 of limitations.

4 D. Plaintiffs' claims against The Vanguard Group are barred because Plaintiffs
5 were not injured by reason of any action by The Vanguard Group.

6 E. Plaintiffs' claims are barred in whole or in part by the doctrines of laches
7 and unclean hands.

8 F. Plaintiffs' claims are barred in whole or in part because Plaintiffs' claimed
9 injuries and damages were not legally or proximately caused by any acts or omissions of
10 The Vanguard Group and/or were caused, if at all, by the conduct of third parties
11 including, without limitation, the prior, intervening or superseding conduct of such third
12 parties.

13 G. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to
14 mitigate damages and/or failure to take necessary steps to avoid preventable
15 consequences.

16 Dated: December 1, 2008

PERKINS COIE BROWN & BAIN P.A.

18 By:Jacob C. Robertson

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Marketing Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2008, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

Philip J. Nathanson
The Nathanson Law Firm
8765 East Bell Road - Suite 110
Scottsdale, Arizona 85260
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Attorney for Plaintiffs

I hereby certify that on _____, 2008, I served the attached document by [first class mail/hand delivery] on Judge _____, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

I hereby certify that on _____, 2008, I served the attached document by [facsimile/first class mail/hand delivery] on the following, who are not registered participants of the CM/ECF System: [insert attorneys' names and addresses here]

s/ Charlotte Couch

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